

APPENDIX I

State of California AIR RESOURCES BOARD

**Resolution 10-3
January 28, 2010**

Agenda Item No.: 10-1-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the state and, in sections 39002 and 39003 of the Health and Safety Code, has charged the Board with the responsibility of systematically addressing the serious air pollution problem caused by motor vehicles;

WHEREAS, sections 43013, 43018, 43101, and 43104 of the Health and Safety Code authorize the Board to adopt motor vehicle emission standards, in-use performance standards, and test procedures, which it finds to be necessary, cost-effective, and technologically feasible;

WHEREAS, California identified diesel particulate matter as a toxic air contaminant by regulation (title 17, California Code of Regulations, section 93000) in August, 1998;

WHEREAS, the Board adopted the Diesel Risk Reduction Plan in 2000 which established discrete goals for reducing emissions from virtually all in-use diesel engines within the State of California by 2010 and 2020;

WHEREAS, diesel emission control systems have been developed that may be applied to in-use diesel-fueled vehicles and equipment;

WHEREAS, the Board has adopted a number of regulations to reduce emissions from in-use diesel vehicles and equipment, including heavy-duty on-road vehicles, off-road vehicles, transport refrigeration units and drayage trucks;

WHEREAS, the Board adopted a diesel emission control strategy verification procedure and warranty and in-use compliance requirements for on-road, off-road, and stationary diesel-fueled vehicles and equipment (sections 2700-2710, title 13, California Code of Regulations) in May 16, 2002, and has subsequently amended it several times;

WHEREAS, the verification procedure is intended to support the various regulations approved by the Board to reduce emissions from in-use diesel vehicles and equipment by evaluating the emission reduction claims and durability of the diesel emission control strategies and providing a manufacturer warranty for these systems;

WHEREAS, the verification procedure is a voluntary program whereby manufacturers of diesel emission control strategies may apply for the verification of a candidate device for sale in California;

WHEREAS, the federal Clean Air Act grants the State of California the authority to adopt standards for the control of emissions from new motor vehicles and engines if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as the applicable federal standards;

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) has published a draft document, "General Verification Protocol for Diesel Exhaust Catalysts, Particulate Filters, and Engine Modification Control Technologies for Highway and Nonroad Use Diesel Engines," but has not promulgated formal regulations for this verification protocol;

WHEREAS, the U.S. EPA verification protocol is intended to support the voluntary retrofit programs initiated by U.S. EPA, while staff's proposal is to support ARB's Diesel Risk Reduction Plan and all the associated in-use fleet regulations.

WHEREAS, there are significant differences between the California verification program and the voluntary U.S. EPA verification protocol, most notably that the U.S. EPA program does not have warranty provisions;

WHEREAS, to improve the effectiveness of the California verification program, ARB staff has proposed the adoption of amendments to the verification procedure;

WHEREAS, ARB staff met and worked with affected stakeholders in developing the proposed amendments, including meetings with affected stakeholders and a public workshop;

WHEREAS, with the information and comments received from such meetings, ARB staff prepared a report entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Amendments to the Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines," released December 10, 2009 (ISOR);

WHEREAS, the Board has considered the effects of the proposed amendments on the economy of the State;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Executive Officer has determined that the proposed regulations will not have a significant, if any, impact on the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California;

WHEREAS, the Board finds that:

Diesel emission control strategies have been proven successful in a variety of applications and field demonstration programs;

It is appropriate for California to establish and maintain its own diesel emission control strategy verification program;

The proposed regulations are authorized by California law, and the cost of the regulations is justified by the benefit to human health, public safety, or the environment;

The economic and fiscal impacts of the proposed amendments to the verification procedure have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the ISOR;

The function of the proposed amendments is to improve the ability of the verification procedure to support the Diesel Risk Reduction Plan and related programs such as the Statewide Truck and Bus Fleet Rule, In-use Off Road Rule, the Carl Moyer Memorial Air Quality Standards Attainment Program, and the Lower-Emissions School Bus Program; and

Because no direct emissions benefits are associated with the staff's proposal, a traditional cost effectiveness calculation cannot be made;

WHEREAS, the Board further finds that the proposed amendments would:

Require applicants to provide, during the application process, detailed installation requirements including space requirements, visibility concerns, device orientation, engine oil consumption limits, etc;

Include the installer of diesel emission control strategies as a responsible party for record keeping requirements as described in section 2702(m)(1);

Require diesel emission control strategy providers to demonstrate the compatibility of an engine with the diesel emission control strategy prior to installation;

Shorten the period applicants currently have to submit a report of any incidents during the durability or field demonstration period;

Require all temperature dependent diesel emission control strategies that are verified to have the capability to measure and record certain operational parameters;

Require applicants for verification to conform to industrial safety regulations for all durability and field demonstrations conducted in California as set forth by the Division of Occupational Safety and Health of the California Department of Industrial Relations;

Require applicants to submit digital photographs of diesel emission control strategies and demonstration vehicles or equipment as part of the application for verification;

Require diesel emission control strategy manufacturers provide more comprehensive maintenance information to owners, and that this information be provided upon delivery of the diesel emission control strategy;

Modify current provisions by removing the restriction that diesel emission control strategy components may only be swapped within a given common ownership fleet;

Clarify the type of data that must be recorded during durability demonstrations and field demonstrations;

Add clarifying language granting ARB authority to modify or suspend a verification if the warranty claim rate exceeds the four percent threshold;

Identify off-road categories and list the most appropriate test procedure that must be used for both emissions and durability testing for each category;

Clarify that the installation warranty requirements are identical to the product warranty requirements;

Allow re-designation of a diesel emission control strategy during a vehicle or equipment repower event;

Clarify the installer's warranty responsibilities for both component swapping and diesel emission control strategy re-designation;

Clarify that only Air Resources Board verified diesel emission control strategies may carry a label identifying them as verified;

Clarify the unidirectional design requirement contained in section 2706(r);

Clarify, through the adoption of the new section 2711, that sale of a verified diesel emission control strategy that does not meet the terms of the Executive Order is prohibited and that representing a retrofit system as verified is prohibited unless it has been verified under the Procedure; and

Clarify some existing requirements to aid applicants in the verification process;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the amendments to sections 2701, 2702, 2703, 2704, 2705, 2706, and 2707, and adopts the new section 2711, title 13, California Code of Regulations, as set forth in Attachment A and B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt section 2701, 2702, 2703, 2704, 2705, 2706, 2707 and the proposed new section 2711, California Code of Regulations, after making the modified regulatory language available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations approved herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the regulations approved herein will not cause the California emission standards and test procedures for new motor vehicles to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the U.S. EPA pursuant to section 209(b) of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the amended regulations to the U.S. EPA with a request for a waiver of federal

preemption pursuant to section 209(b) of the Clean Air Act, or confirmation that the amendments are within the scope of previous waivers, as appropriate.

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Identification of Attachments to the Resolution

- Attachment A:** Proposed Regulation for the Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines, as set forth in Appendix A of the Staff Report: Initial Statement of Reasons, released December 10, 2009
- Attachment B:** Staff's Suggested Modifications to the Original Proposal (Distributed at the January 28, 2010 Board hearing)